

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**PANERA, LLC AND PANERA BREAD COMPANY,  
AND MANNA DEVELOPMENT GROUP, LLC,  
AND BREAD OF LIFE, LLC D/B/A PANERA BREAD,  
Joint Employers and/or Single Employer**

**and**

**Case 07-CA-136197**

**LOCAL 70, BAKERY, CONFECTIONERY,  
TOBACCO WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO, CLC**

**ORDER<sup>1</sup>**

The petition of Panera, LLC to revoke subpoena duces tecum B-1-KFIEXL, the petition of Panera Bread Company to revoke subpoena duces tecum B-1-KFEHIR, the petition of Manna Development Group to revoke subpoena duces tecum B-1-KFH4IR, and the petition of Bread of Life, LLC to revoke subpoena duces tecum B-1-KFFZCT are denied. The subpoenas seek information relevant to the matters under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.<sup>2</sup> Further,

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> Contrary to our colleague, we do not find the subpoenas are unduly burdensome. The mere fact that the requests are numerous is insufficient to show that the burden was unreasonable. See *FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977); *McAllister Towing & Transp., Inc.*, 341 NLRB 394, 397 (2004) ("breadth of subpoenas does not establish that they were unduly burdensome") (citing *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir. 1996)). As our colleague observes, the General Counsel requested documents that Panera Bread provided to Bread of Life concerning employee calibrations (evaluations) and certain bakery product specifications. Panera Bread Company's involvement in specifying products and evaluating the job performance of employees of Bread of Life, its franchisee, is relevant to the question of whether Panera Bread Company is a joint employer of the employees in the bargaining unit. In addition, the General Counsel subpoenaed documents from Bread of Life, and only Bread of Life, concerning "daytime refrigerator/cooler bagels" as part of the investigation into Bread of Life's alleged unfair

the Petitioners have failed to establish any other legal basis for revoking the subpoenas.<sup>3</sup> See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., May 22, 2015.

KENT Y. HIROZAWA,	MEMBER
HARRY I. JOHNSON, III,	MEMBER
LAUREN McFERRAN,	MEMBER

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labor practices. The Petitioner offered no evidence, indeed did not even argue, that this request was overly burdensome. We disagree that the request is facially burdensome simply because it is specific. Rather, we find that the requests in the subpoena are tailored to particular factual questions at issue in the case and are not overly burdensome.

<sup>3</sup> Member Johnson would not find the subpoenas here are burdensome due to the date range (some requests go back to 2011) or requested response time, which are particular arguments advanced by the Petitioners. He would also ordinarily deny the Petitioners' general burdensomeness contention, for lack of substantiation. But, in the circumstances of this case where the problems of the subpoenas are manifest on their face, he agrees in part with the general burdensomeness contention. Here, two of the subpoenas contain 35 paragraphs of substantive requests, and the other two contain 57 such requests. The requests cover matters as apparently minute as particular "calibration" evaluations of employees, "bakery product specifications," and "daytime refrigerator/cooler bagels" (e.g., Subpoena B1-KFFZCT, ¶¶14, 19, and 31), and effectively require reviewing, if not providing, all written documents or electronic data relating to such matters. This is too much, especially at the investigative stage, and where the breadth of subpoenas' definitions and instructions (e.g., id., ¶B.2.: "all electronic or digital information of any kind...") shows that the subpoenas far exceed what would reasonably enable the General Counsel to determine whether a complaint should issue or should be expanded. Contrary to my colleagues' point of view, my issue with the subpoena is not merely numerosity, but numerosity combined with minutiae. Moreover, there is an objection to *all* of the requests on the ground of burdensomeness. Petition to Revoke Subpoena B1-KFFZCT, ¶1 ("The requests are overly burdensome because they request documents from as early as 2011 when the Charge is based on events alleged to have occurred in 2014.") Thus, Member Johnson would grant the petitions to revoke in part, insofar as to curtail all the subpoena requests that, in essence, ask for "all documents regarding [item X]" to require the Petitioners to provide only "such documents as would be sufficient to describe or represent [item X]". Member Johnson would deny the petitions in all other respects.